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IN THE
COURT OF APPEALS OF INDIANA

SHERYL CROWDER TAYLOR,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 49A04-0712-CV-698
	)	
DAVID TAYLOR,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Heather Welch, Judge
Cause No. 49D10-0402-DR-230

June 18, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Sheryl Crowder Taylor ("Wife") challenges the trial court's denial of her motion for attorney's fees pursuant to the dissolution of her marriage to David Taylor ("Husband").

We affirm.

ISSUES

1. Whether the trial court erred when it denied Wife's motion based upon the terms of the parties' mediation agreement.

2. Whether Wife's challenge to the trial court's bifurcation of the dissolution action is subject to appellate review.

FACTS

On January 8, 2004, Wife filed a petition for dissolution of marriage. On May 5, 2004, the trial court approved an order requiring Husband and Wife to attend mediation. On July 19, 2004, the mediator filed a report with the trial court. Husband and Wife had entered into a Mediated Agreement, wherein they agreed, in relevant part, to the following:

> Attorney/Mediation Fees. Husband shall pay $5,000.00 of Wife's attorney fees to Wife, which shall be paid in two installments, the first installment of $2,500.00 shall be due on August 15, 2004, and the second installment of $2,500.00 shall be due on September 15, 2004. Husband shall pay 100% of the fees incurred by the mediator for preparation and mediation on July 9, 2004 and any wrap up of said mediation session, minus the retainer amount paid by Husband and Wife prior to mediation. Future mediation sessions, if any, shall be paid by the parties individually. Future attorney fees shall be paid by each party. Husband shall have no liability for Wife's future legal expenses incurred through the date of the Decree of Dissolution of Marriage.

(Wife's App. 32) (emphasis added). At the dissolution hearing scheduled for November 15, 2004, the trial court was faced with the issue of whether it could dissolve the marriage on that day, leaving certain contested issues to be resolved at the final hearing. The trial court would also address issues pertaining to the parties' children's schooling and child support expenses.

Wife testified that although she had agreed, pursuant to the mediated agreement, to bear the cost of her attorney's fees incurred "for the duration of th[e] action until the dissolution of marriage," she wanted the trial court to revisit the issue of attorney's fees. (Husband's App. 57). When Wife's counsel asked her how her circumstances had changed since the parties' entry into the mediation agreement, Husband's counsel objected on the basis that the mediated agreement "indicate[d] clearly that [Husband] is to pay no more attorney fees beyond the mediated agreement and beyond what he ha[d] already paid." (Husband's App. 57). Wife's counsel responded that the costs associated with "new litigation [between the parties] . . . including the possibility of eleven depositions" had become "unduly burdensome" to Wife. (Husband's App. 57). Wife's counsel then asked the trial court to take the matter of revisiting attorney fees under advisement. Husband's counsel again objected, noting that there was no new pending litigation and that the parties' mediated agreement had already addressed the attorney's fees issue.

The trial court then expressed its concern that dissolving the marriage on that date and leaving the issue of attorney's fees open to relitigation could defeat "the purpose or the spirit of the mediated agreement." (Tr. 104). The trial court then stated that it would

not dissolve the marriage unless the parties agreed that matters settled under the mediation agreement, such as attorney's fees, could not be relitigated. It stated,

> I mean, I don't think I have a choice based on the case law. I can either grant the dissolution today with the caveat that attorney's fees are each their own or they can stay married . . . .
>
> * * *
>
> So I'll give you each the opportunity to talk to your clients but I think I'm violating the spirit of the mediated agreement because it's very clear. It says in essence – I mean you['ve] deal[t] with the issue of attorney fees leaving that not at the court's discretion at the final hearing. I mean, it's taken care of. * * * So to me . . . we can't re-litigate the issue of attorney fees because . . . you've got an agreement on it. So I can grant the dissolution today with the caveat that that is not an issue that the mediated agreement will control. Because to me even though I'm dissolving the marriage I'm still not dealing with all of the issues in the dissolution . . . . So it can be a dissolution today. * * * With the caveat that attorney fees won't be an issue at the final issue [sic] on the custody or they can stay married until that date. But I think the mediated agreement has to control either way.

(Husband's App. 107, 108-09). Thereafter, the parties consulted with their respective counsels. Subsequently, without objection, the proceedings continued and the trial court, after hearing evidence, took the matter under advisement.

On December 3, 2004, the trial court issued an order dissolving the marriage of the parties, specifically finding, again without objection, that (1) the parties' marriage was irretrievably broken and should be dissolved; and (2) "the issues involving custody, parenting time, child support, and any property issues not addressed in the mediated agreement would be addressed at [the] final hearing on April 25, 2005 . . . ." (Wife's App. 35) (emphasis added). The trial court also issued an Order on Child Support, Child Support Arrearage, Tax Exemptions, [L.'s] Preschool, and Attorney Fees, wherein it decreed, in relevant part, the following:

> 8. On the issue of attorney fees, the Court finds that the mediated agreement is controlling and that the issue of attorney fees has been resolved and that dissolving the marriage does not mean the matter has been finalized as the Court will hear evidence on April 25 and 28, 2005 on issues involving the minor children.

(Wife's App. 38).

On March 9, 2007, the trial court approved its final Order on Contested Issues in Dissolution, wherein it cited the aforementioned Attorney/Mediation Fees provision of the Mediation Agreement and added,

> 63. The Court hereby finds that based upon the reading of the Mediated Agreement that . . . [Wife] and [Husband] shall be responsible for their own attorney fees. Simply because the Court dissolved the marriage in December of 2004, does not mean that the issues relating to the Dissolution were resolved which is allowed for under the bifurcation statute.

(Wife's App. 66). This appeal ensued.

Additional facts will be provided as necessary.

DECISION

Wife first argues that Husband should be liable for her attorney's fees incurred after the trial court issued its decree of dissolution on December 3, 2004. She also challenges whether the trial court complied with the statutory filing requirements of the bifurcation statute.

1. Mediation Agreement

We first address Wife's challenge to the trial court's interpretation of the mediated agreement. This issue requires us to interpret the terms of a written contract, and therefore, involves a pure question of law; thus, our standard of review is *de novo*.

Whitaker v. Brunner, 814 N.E.2d 288 (Ind. Ct. App. 2004). Dissolution courts retain jurisdiction to interpret and enforce the terms of marital property settlement agreements. *Fackler v. Powell*, 839 N.E.2d 165, 168 (Ind. 2005). Property settlement agreements crafted upon dissolution of marriage are contractual in nature and binding. *Rodriguez v. Rodriguez*, 818 N.E.2d 993, 995 (Ind. Ct. App. 2004). General rules of contract construction and interpretation govern marriage property settlement agreements. *Id*.

When we interpret the meaning of a contract, our primary goal is to determine and effectuate the intent of the parties. *Shorter v. Shorter*, 851 N.E.2d 378, 383-84 (Ind. Ct. App. 2006). We must first determine whether the language of the contract is ambiguous. *Id*. "Clear and unambiguous terms in the contract are deemed conclusive, and when they are present we will not construe the contract or look to extrinsic evidence, but will merely apply the contractual provisions." *Id*. "Unambiguous contract terms will be given their plain and ordinary meaning." *Id*.

"The terms of a contract are not ambiguous merely because controversy exists between the parties concerning the proper interpretation of terms." *Niccum v. Niccum*, 734 N.E.2d 637, 639 (Ind. Ct. App. 2000). "The terms of a contract are ambiguous only when reasonably intelligent persons would honestly differ as to the meaning of those terms." *Schmidt v. Schmidt*, 812 N.E.2d 1074, 1083 (Ind. Ct. App. 2004).

The attorney's fees provision of the Mediated Agreement states,

> Husband shall pay $5,000.00 of Wife's attorney fees to Wife, which shall be paid in two installments, the first installment of $2,500.00 shall be due on August 15, 2004, and the second installment of $2,500.00 shall be due on September 15, 2004. Husband shall pay 100% of the fees incurred by the mediator for preparation and mediation on July 9, 2004 and any wrap

> up of said mediation session, minus the retainer amount paid by Husband and Wife prior to mediation. Future mediation sessions, if any, shall be paid by the parties individually. Future attorney fees shall be paid by each party. Husband shall have no liability for Wife's future legal expenses incurred through the date of the Decree of Dissolution of Marriage.

(Wife's App. 32) (emphasis added).

Wife interprets the final sentence of the foregoing passage to mean that Husband "no longer is free from liability for [her] attorney fees" incurred after the date of the decree of dissolution. Wife's Br. at 6. We disagree. The penultimate sentence of the provision unequivocally states the parties' intention that each will be responsible for his or her own attorney's fees. In our view, the final sentence simply restates the parties' intention that Husband will bear no financial responsibility for Wife's legal expenses incurred between the parties' entry into the mediation agreement and the dissolution of their marriage. We find no ambiguity here.

We find that the plain language of the mediated agreement supports the trial court's finding that pursuant to the parties' agreement, Husband would pay $5,000.00 of Wife's attorney's fees, and thereafter, each party would bear full responsibility for the remainder of attorney's fees incurred by him or her. We find that Wife's attempt to relitigate the issue of attorney's fees, would, in the language of the trial court, "defeat the purpose or the spirit of the [parties'] mediated agreement." (Tr. 104). In our view, reasonably intelligent persons would not honestly differ as to the meaning of the contract terms at issue. Thus, we find neither ambiguity in the agreement nor error in the trial court's decision. *See Schmidt*, 812 N.E.2d at 1083.

2. Bifurcation

Next, we address Wife's contention that the trial court improperly invoked the bifurcation statute and that, as a result, the mediated agreement is somehow rendered invalid. In support of her contention, Wife directs our attention to the filing requirements set out in the statute and asserts that due to the trial court's non-compliance therewith, "the bifurcation statute does not apply here." Wife's Br. at 6. Again, we disagree.

Indiana Code section 31-15-2-14 authorizes trial courts to bifurcate the issues in a dissolution action "to provide for a summary disposition of uncontested issues and a final hearing of contested issues." Thus, the bifurcation process allows a trial judge to complete a dissolution in two separate phases. *Bass v. Bass*, 779 N.E.2d 582, 591-92 (Ind. Ct. App. 2002). "A dissolution action is not complete until the second phase is finished and a final decree is entered." *Id*. at 592. The statute specifies the filing requirements for bifurcation as follows:

> Sec. 14. (a) * * * The court may enter a summary disposition order under this section upon the filing with court of verified pleadings, signed by both parties, containing:
> (1) a written waiver of a final hearing in the matter of:
> (A) uncontested issues specified in the waiver; or
> (B) contested issues specified in the waiver upon which the parties have reached an agreement;
> (2) a written agreement made in accordance with section 17 of this chapter pertaining to contested issues settled by the parties; and
> (3) a statement:
> (A) specifying contested issues remaining between the parties; and
> (B) requesting the court to order a final hearing as to contested issues to be held under this chapter.

I.C. § 31-15-2-14.

Wife contends that the bifurcation statute is inapplicable here because, "There was no verified pleading filed by the parties. The parties did not make any filings referencing

this statute. The specific filings required by the statute were not submitted to the trial court." Wife's Br. at 7. We find that this issue is not reviewable on appeal because Wife invited this error.

Under the doctrine of invited error, a party may not take advantage of an error that she commits, invites, or which is the natural consequence of her own neglect or misconduct. *Balicki v. Balicki*, 837 N.E.2d 532, 541 (Ind. Ct. App. 2005). Invited error is not subject to review by this court. *Batterman v. Bender*, 809 N.E.2d 410, 412 (Ind. Ct. App. 2004).

There is ample evidence in the record to indicate that Wife both sought and supported the trial court's bifurcation of the dissolution action. Most notably, the following colloquy, which ensued between Wife and her counsel at the hearing on November 15, 2004, lends strong support to this conclusion:

> [Counsel]: Are you asking that this court grant a dissolution of marriage today?
>
> [Wife]: Yes.
>
> [Counsel]: Are you asking that the court bifurcate the hearing . . . stating [sic] the issue of custody for a later time?
>
> [Wife]: Yes.

(Tr. 23). Wife's acquiescence to bifurcation was also evident after her counsel asked the trial court to take the issue of attorney's fees under advisement, despite the existence of a mediated agreement provision that had already settled the issue. Thereafter, the trial court responded,

> Well I generally decide that [question] at the final hearing. So I think we should hear the evidence then and I'll decide who should pay the attorney fees at the final hearing.

(Tr. 58). Again, Wife raised no objection to the trial court's reference to bifurcation. Lastly, near the close of the hearing, the trial court again referred to the bifurcation of the parties' dissolution action, this time expressing its concern about violating the spirit of the parties' mediated agreement provision regarding attorney's fees. Explaining that contested issues could, by statute, be disposed of at a final hearing, the trial court made the following statement:

> I don't necessarily --- and I do it quite often [---] have a problem because the [bifurcation] statute allows you [sic] to dissolve the marriage but deal with property and custody issues down the road . . . ."

(Tr. 104). Yet again, Wife did not object to the trial court's acknowledgment of its ability to bifurcate the dissolution action by granting the dissolution that day, while leaving contested issues to be addressed at the final hearing.

To the extent that the statutory filing requirements for bifurcation were not satisfied here, the record reveals that Wife expressly and implicitly invited said error and was entirely supportive of pursuing bifurcation when it appeared to suit her interests. A party that invites error may not take advantage of such alleged error *Id.* This issue is not reviewable on appeal.

Affirmed.

BAKER, C.J., and BRADFORD, J., concur.